

DRAFT 5/18/16

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2016-02

**Joint Petition of IFM Global Infrastructure Fund and Nautilus Generation, LLC
For Approval of the Transfer of Membership Interests in
Essential Power Newington, LLC**

**JOINTLY PROPOSED DECISION AND ORDER APPROVING TRANSFER OF OWNERSHIP
INTERESTS IN ESSENTIAL POWER NEWINGTON, LLC**

IFM Global Infrastructure Fund and Nautilus Generation, LLC filed a Joint Petition seeking approval from the Site Evaluation Committee under RSA 162-H to transfer membership interests in Essential Power Newington, LLC to Nautilus Generation, LLC. Essential Power Newington, LLC owns and operates the 525-megawatt combined-cycle, dual fuel merchant electric generation facility located in Newington, New Hampshire. Essential Power Newington, LLC holds the original Certificate of Site and Facility granted in May 1999 to Newington Energy, LLC (SEC Docket No. 98-01). The Site Evaluation Committee's authority to consider the issue raised in this docket is set forth at RSA 162-H:4 and RSA 162-H:5, I.

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Introduction

In their Joint Petition, IFM Global Infrastructure Fund (“IFM”) and Nautilus Generation, LLC (“Nautilus” and jointly with IFM as “Petitioners”) seek approval from the Site Evaluation Committee (Committee) to transfer membership interests in Essential Power Newington, LLC (“EP Newington”) from IFM to Nautilus. EP Newington owns and operates a 525 megawatt (MW)¹ combined-cycle, dual fuel merchant electric generation facility located in Newington, New Hampshire (the “Facility”). EP Newington holds the original Certificate of Site and Facility granted in May 1999 to Newington Energy, LLC (SEC Docket No. 98-01) (the “Certificate”). In 2008, the Committee approved the transfer of 100% of the membership interests in EP Newington to Essential Power, LLC (“EPLLC”), a subsidiary of Essential Power Investments, LLC (“Essential Power Investments”) (which was known as North American Energy Alliance, LLC at the time of the transfer) (*Decision and Order Approving Transfer*, Docket No. 2008-01).

The Facility consists of a 525-megawatt (MW) combined-cycle, dual fuel merchant electric generation facility located near the Piscataqua River in Newington, New Hampshire. The Facility includes a water supply pipeline and intake structure in the Piscataqua River and an electric transmission line interconnecting the Facility to the substation at the Public Service Company of New Hampshire (“PSNH”) Newington Power Station. A natural gas pipeline runs from the Portland Natural Gas Transmission System and Maritimes Northeast (joint facilities)

¹ In 2014, EP Newington made minor modifications to the combustion turbines that resulted in facility capacity being increased to 553.5 MW (summer rating). NHDES reviewed this minor modification and issued an amended temporary air permit authorizing it.

interconnection point to the Facility's site to transport the primary fuel. An oil transfer pipeline, which is owned by Sprague Energy, transmits alternate ultra-low sulfur diesel ("ULSD") to the Facility's site. One above ground ULSD fuel storage tank ("AST"), with one million gallons of storage capacity, is also located on the Facility's site.

Any proposed change in ownership of EP Newington as the Certificate holder for the Facility is subject to the approval of the Committee. This right to approve a change in ownership is set forth as General Condition 6 (Attachment A) to the Certificate and was reiterated by the Committee in its April 18, 2008 Decision and Order in *Joint Application of Newington Energy, LLC, et al.*, SEC Docket No. 2008-1. The Petitioners seek Committee approval to transfer all membership interests in EP Newington to Nautilus.

History of the Project and Reasons for the Relief Sought

On July 2, 1998, EP Newington (then named Newington Energy, LLC) filed its application with the Committee requesting a Certificate of Site and Facility to construct and operate the Facility. After completing the statutorily required review process and public hearing, the Committee granted the Certificate on May 25, 1999 (SEC Docket No. 98-01).

In 2001, the Committee authorized EP Newington to construct a 345kV overhead transmission line along the route referred to as Option 2 among the two alternative routes for the transmission corridor discussed in the Certificate of Site and Facility. *Order on Request to Proceed with Option 2*, Docket No. 98-01 at 1 (Jan. 24, 2001). This Order was revised by subsequent Order dated April 17, 2001, pursuant to EP Newington's request to conform the Order's description of the alignment of Option 2 to the Meridian plan, Revision W, dated September 15, 2000, as submitted by NEL. *Revised Order on Request to Proceed with Option 2*, Docket 98-01 at 1 (Apr. 17, 2001).

EP Newington filed a Conditional Request with the Committee on or about April 30, 2001, requesting revision to the Certificate of Site and Facility to authorize construction of one AST for back-up fuel storage, where construction of two ASTs was originally authorized. EP Newington determined that it no longer required two ASTs, after entering into a terminal agreement with Sprague Energy Corp. (“Sprague”), in which Sprague proposed to construct and operate a fuel transfer pipeline to the Facility’s site and lease additional fuel storage capacity to EP Newington. The Committee approved EP Newington's conditional request. *Decision and Order on Conditional Request for Authorization to Construct One AST and to Revise NEL’s Certificate Consistent Therewith*, Docket No. 1998-01 at 3 (June 29, 2001).

Construction of the Facility commenced on or about April 2000, and was substantially completed on or about September 25, 2002. The Facility commenced commercial operation and began selling power into the NEPOOL wholesale market, as administered by ISO-New England (“ISO-NE”), during November, 2002. EP Newington has owned and operated the Facility under the terms of the Certificate.

The Facility subsequently came before the Committee’s review when EP Newington and EPLLC filed a “Joint Application of Newington Energy, LLC and North American Energy Alliance, LLC for Approval of Transfer of Membership Interests in NEL” on January 14, 2008. In the Joint Application, the co-applicants sought approval to transfer the ownership interests in certain entities, including the transfer of ownership interests in EP Newington to EPLLC. After full consideration of this request, by Order dated April 18, 2008 the Committee approved the transfer of EP Newington’s membership interests to EPLLC, Docket No. 2008-01 (April 18, 2008).

IFM and Nautilus have entered into a Purchase and Sale Agreement dated as of February 1, 2016 (the “PSA”), under which IFM has agreed to sell 100% of its membership interests in Essential Power Investments to Nautilus. The resulting transfer of ownership of EP Newington and the Facility is expressly subject to this Committee’s approval in accordance with General Condition 6 (Attachment A) of the Certificate. The ownership of the Facility will essentially stay the same as it is today in that (1) Essential Power Investments will continue to own EP Newington, (2) EP Newington will continue to own and (through a service contract with its affiliate) operate the Facility, and (3) EP Newington will continue to hold, and be responsible for the performance of, the Certificate. The only change to the corporate structure will be the transfer of the membership interests in Essential Power Investments from IFM to Nautilus.

Procedural History

On February 29, 2016, Petitioners submitted a Joint Petition for approval to transfer 100% of the membership interests in EP Newington from IFM to Nautilus. The Joint Petition included pre-filed testimony of Matthew O’Connor, Managing Director and Partner at The Carlyle Group, and William Felts, Executive Vice President for Mergers and Acquisitions and Energy Management of Cogentrix Energy Power Management, LLC. The Joint Petition requested immediate appointment of a three-member subcommittee under RSA 162-H and an expedited review and approval of the proposed transfer of the membership interests in EP Newington to Nautilus.

On March 28, 2016, an Order was issued appointing a three-member Subcommittee pursuant to RSA 162-H:4-a, III (Subcommittee). The Subcommittee was charged with resolving all issues that might arise in this docket and to determine whether to grant or deny the Joint Petition.

On April 20, 2016, the Subcommittee issued an Order and Notice of Pre-Hearing Conference and Public Hearing. The Order and Notice set out procedural deadlines and scheduled a hearing on the merits of the Joint Petition to be held on June 2 and June 3, 2016.

On May 2, 2016, Nautilus, by its legal counsel, filed an affidavit stating the Order and Notice of Pre-Hearing Conference and Public Hearing was published as ordered by the Subcommittee.

The Subcommittee did not receive any motions to intervene in this docket.

[The Pre-Hearing Conference was held on May 18, 2016 at the office of the Public Utilities Commission and the Subcommittee and all parties, including Public Counsel, were present.

The adjudicative hearing was held on June 2, 2016, at the office of the Public Utilities Commission.]

Criteria for Approval of the Joint Petition

RSA 162-H: 5, I requires the Committee's approval of transfer or assignment of a Certificate to any other person or entity. *See* RSA 162-H:5, I. In addition, under the terms of the Certificate issued to Newington Energy, LLC in docket No. 98-01, a change in ownership of Newington Energy, LLC without the approval of the Committee renders the Certificate subject to revocation. *See* Order, Docket No. 98-01, Attachment A, ¶6 (May 25, 1999). In the Decision and Order approving transfer of EP Newington's membership interests to EPLLC, the Committee noted that the Order "does not change or modify any of the terms and conditions of the Certificate." *See* Decision and Order Approving Transfer, Docket No. 2008-01 (April 18, 2008). In other dockets, the Committee has set forth and applied a standard of review for petitions

requesting approval of transfer of membership or equity interests in owners of energy facilities that have already been granted a certificate of site and facility.

To approve a transfer in ownership, the proposed owner should demonstrate by the preponderance of evidence that it possesses adequate financial, managerial and technical capabilities to assure that the conditions of the Certificate are continuously met. *See* RSA 162-H:16, IV (a); *see also* Decision and Order Approving Transfer of Ownership Interests in Granite Ridge Energy, LLC, Docket No. 2015-07 (Feb. 3, 2016); Decision and Order Approving Transfer of Ownership Interest in Granite Reliable Power LLC, Docket No. 2010-03 (Feb. 8, 2011). “Ongoing environmental compliance and the safe operation of the facility are of the utmost concern to the Committee and the State of New Hampshire.” *See* Decision and Order Approving Transfer, Newington Energy, LLC and North American Energy Alliance, LLC, Docket No. 2008-01 (April 18, 2008). The Committee will review the financial, technical and managerial experience of the proposed new owner in order to determine whether the proposed owner possesses adequate financial, managerial and technical capabilities to assure that the conditions of the Certificate are continuously met. *See* Decision and Order Approving Transfer of Ownership Interests in Granite Ridge Energy, LLC, Docket No. 2015-07 (Feb. 3, 2016).

Furthermore, under newly enacted New Hampshire Code of Administrative Rules, Site 301.13, when determining whether an applicant for a Certificate of Site and Facility has the financial capability to construct and operate the facility, the Committee is required to consider the following:

- (1) *The applicant’s experience in securing funding to construct and operate energy facilities similar to the proposed facility;*
- (2) *The experience and expertise of the applicant and its advisors, to the extent the applicant is relying on advisors;*

- (3) *The applicant's statements of current and pro forma assets and liabilities; and*
- (4) *Financial commitments the applicant has obtained or made in support of the construction and operation of the proposed facility.*

N.H. CODE ADMIN. R. Site 301.13, (a)(1)-(4) (2015).

When determining whether an applicant for a Certificate of Site and Facility, has the technical capability to construct and operate the facility, the Committee is required to consider the following:

- (1) *The applicant's experience in designing, constructing, and operating energy facilities similar to the proposed facility; and*
- (2) *The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide technical support for the construction and operation of the proposed facility, if known at the time.*

Id., Site 301.13 (b)(1)-(2).

Finally, when determining whether an applicant for a Certificate of Site and Facility, has the managerial capability to construct and operate the facility, the Committee is required to consider the following:

- (1) *The applicant's experience in managing the construction and operation of energy facilities similar to the proposed facility; and*
- (2) *The experience and expertise of any contractors or consultants engaged or to be engaged by the applicant to provide managerial support for the construction and operation of the proposed facility, if known at the time.*

Id., Site 301.13 (c)(1)-(2).

Although the new rules address requirements that apply specifically to the applicants who seek a new Certificate for Site and Facility, they provide guidance for determining Nautilus's financial, managerial, and technical capacity to continue operation of the Facility in accordance with the existing Certificate.

Accordingly, the Subcommittee has reviewed the financial, technical and managerial capabilities and experience of the proposed new owner in order to determine whether the Petitioners have demonstrated, by a preponderance of the evidence, that the proposed owner possesses adequate financial, managerial and technical capabilities to assure that the terms and conditions of the Certificate will be continuously met.

Findings and Analysis

The Petitioners seek approval to transfer all of the membership interests in EP Newington to Nautilus. Nautilus will acquire such membership interests in EP Newington indirectly through Nautilus' acquisition of membership interests in Essential Power Investments. Essential Power Investments owns, through several wholly-owned subsidiaries, a 100% equity interest in EP Newington. IFM itself owns 100% of the membership interests in Essential Power Investments. Nautilus was formed for the purposes of acquiring Essential Power Investments and its subsidiaries. Nautilus is wholly owned by Carlyle Power Partners II, L.P. ("CPP II") and certain affiliated funds (collectively, "CPP II"), all of which are controlled by their general partner, CPP II General Partner, L.P. CPP II General Partner, L.P. is ultimately controlled by The Carlyle Group L.P. ("Carlyle"). CPP II is the second power investment fund of Carlyle Power Partners since December 2012. Carlyle Power Partners is the North American power platform of Carlyle. IFM and Nautilus have entered into a PSA under which IFM has agreed to sell 100% of its membership interests in Essential Power Investments to Nautilus.

As described above, the ownership of the Facility will essentially stay the same as it is today. The only change to the corporate structure will be the transfer of the membership interests in Essential Power Investments from IFM to Nautilus. Essential Power Investments will continue to own EP Newington, EP Newington will continue to own and (through a service contract with

its affiliate) operate the Facility, and EP Newington will continue to hold, and be responsible for the performance of, the Certificate.

The Facility is currently operated by a subsidiary of Essential Power Investments, Essential Power Operating Company, LLC (“EPOC”) pursuant to an operation and maintenance services agreement. The Facility is the largest of Essential Power Investments’ assets, and EPOC employs a plant staff of 22 on-site employees for the operation and maintenance of the Facility. The station is manned 24 hours per day. *See* Joint Petition, p. 13.

The record reflects that EPOC personnel have managed and operated the Facility in continued compliance with the conditions of the Certificate and with all applicable federal, state, and local laws, statutes, regulations, and codes, and in material compliance with the terms and conditions of the Certificate and the ISO-NE tariff. *See* Joint Petition, p. 13. Comprehensive regulatory compliance programs have been implemented to meet the applicable environmental, safety, and electric reliability standards. *See* Joint Petition, p. 13 and Pre-Filed Testimony of William Felts, p. 5. The record further reflects that Nautilus intends to retain the existing on-site plant personnel to continue day-to-day operations and maintenance of the Facility. The Facility’s current operating capabilities will be enhanced further through affiliation with the resources of Nautilus and its affiliates. *See* Joint Petition, p. 15 and Pre-Filed Testimony of William Felts, p. 5.

The record reflects that Nautilus’s affiliates have substantial resources and experience in ownership and operation of energy facilities. CPP II is a private equity fund focused on investing in power generation assets in North America. Carlyle Power Partners, which includes CPP II and other entities, owns a North American portfolio of power investments consisting of 17 assets with a total net capacity of approximately 4,080 MW, excluding the proposed acquisition of the

membership interests in Essential Power Investments. The existing portfolio includes large combined-cycle assets similar to the Facility, namely the Effingham Facility, a 510 MW facility located in Georgia, Red Oak Power, an 823 MW facility in New Jersey, and the Rhode Island State Energy Center, a 583 MW facility in Johnston, Rhode Island. *See* Pre-Filed Testimony of Matthew O'Connor, p. 5.

The record reflects that Carlyle Power Partners owns Cogentrix Energy Power Management, LLC (together with its predecessors and its and their subsidiaries, "Cogentrix"), which serves as Carlyle Power Partners' management team for engineering, operations and asset management of its power generation assets. Cogentrix has substantial experience in the development, construction, ownership, operation and management of a variety of power generation facilities. Cogentrix was acquired by Carlyle Power Partners in 2012. *See* Joint Petition, p. 14.

In his testimony, Matthew O'Connor, Managing Director and Partner at Carlyle, explained that CPP II will provide the equity capital necessary to purchase the membership interests in Essential Power Investments. *See* Pre-Filed Testimony of Matthew O'Connor, p. 5. CPP II has obtained \$1.5 billion in capital commitments as of April, 2016. CPP II has received commitments from institutional and personal investors, including pension funds, sovereign wealth funds, insurance companies, asset managers, endowments, and Carlyle employees. *See* Pre-Filed Testimony of Matthew O'Connor, p. 5-6.

According to Mr. O'Connor, Nautilus will also acquire, as part of this transaction, Essential Power Investments' ability to access capital to operate and maintain its generation facilities. *See* Pre-Filed Testimony of Matthew O'Connor, p. 4. A subsidiary of Essential Power Investments currently has a debt facility in place, and EP Newington is a party to this debt

facility. The debt facility contains working capital lines of credit and letter of credit facilities that will be available for use in order to provide additional financial resources to operate and maintain Essential Power Investments' power generation facilities, including the Facility.

According to Mr. O'Connor, the intention is to keep this debt facility in place in connection with the transfer of membership interests in Essential Power Investments to Nautilus. There will be no material changes to the structure, terms or obligations of Essential Power or its subsidiaries currently associated with the debt facility. *See id.*

The record reflects that CPP II is motivated to ensure that EP Newington continues to meet its obligations because the Facility is a core asset in Nautilus' purchase of the Essential Power Investments portfolio. *See Joint Petition, p. 12 and Pre-Filed Testimony of Matthew O'Connor, p. 4.* The Facility represents almost one third of the total capacity of Essential Power Investments' asset portfolio. According to Mr. O'Connor, the Facility is well positioned to benefit from ISO-NE's "Pay for Performance" opportunities (ISO-NE's forward capacity auction market) as well as further coal retirements, carbon regulation and demand growth. *See Pre-Filed Testimony of Matthew O'Connor, p. 4.*

William Felts, Executive Vice President for Mergers and Acquisitions and Energy Management at Cogentrix, offered testimony in support of the technical and managerial capabilities of Nautilus to support EP Newington's operation of the Facility in continued compliance with all conditions of the Facility's Certificate. *See Pre-Filed Testimony of William Felts.*

As described above, Carlyle Power Partners acquired Cogentrix in 2012 to serve as its management team for engineering, operations and asset management of its power generation assets. According to Mr. Felts, Cogentrix has been involved in the development, ownership,

operation and management of power generation facilities with a combined generating capacity of over 10 gigawatts. The firm employs close to 300 full-time personnel and has engineering and operational experience across many generation technologies, including: (a) gas- and oil-fired combined cycle, (b) gas-fired simple cycle, (c) coal-fired technologies, including scrubbed pulverized and stoker coal units and circulating fluidized bed and waste coal units, (d) solar technologies, including solar thermal and concentrating photovoltaic, and (e) run-of-river hydroelectric generation. *See* Pre-Filed Testimony of William Felts, p. 2, 7.

The record reflects that Cogentrix has substantial experience managing and operating facilities similar to the Facility. Cogentrix has managed and operated over 7,600 MW of gas- and oil-fired combined cycle facilities and has developed, designed, built, managed and/or operated seven gas-fired combined cycle plants utilizing the same combustion turbine technology as the Facility (i.e., General Electric 7FA technology). *See* Joint Petition, p. 15 and Pre-Filed Testimony of William Felts, p. 4. Moreover, EP Newington will continue to have access to the support of General Electric International, Inc. in providing certain maintenance services (including certain inspection services) for EP Newington's combustion turbine generators and steam turbine generator pursuant to an existing Contractual Service Agreement. *See* Joint Petition, p. 13 and Pre-Filed Testimony of William Felts, pp. 5-6.

The record demonstrates that EP Newington will, in addition to retaining its existing capabilities, through its affiliation with Cogentrix, gain access to the substantial expertise and capabilities of Cogentrix (which may be made formally available on an as-needed basis through contracts with Cogentrix), plus the benefits of affiliation with Carlyle Power Partners' existing portfolio of assets. Joint Petition, p. 16 and Pre-Filed Testimony of William Felts, p. 6-7. According to Mr. Felts, the benefits available to EP Newington personnel would include access

to Carlyle Power Partners' and Cogentrix' substantial expertise in managing and operating assets like the Facility, potential savings from scaled purchasing and expanded relationships with suppliers and vendors, access to a larger inventory of supplies and replacement equipment across assets, and support and assistance in engineering, financing activities and power marketing. Pre-Filed Testimony of William Felts, p. 6-7.

Conclusion

The Subcommittee finds that the Petitioners have established by a preponderance of the evidence that, following the acquisition of EP Newington by Nautilus, EP Newington will have adequate financial, managerial, and technical capabilities to assure the continued operation of the Facility in continuing compliance with all of the terms and conditions of the Certificate originally issued to Newington Energy, LLC in SEC Docket No. 98-01. The Subcommittee is satisfied that there is sufficient evidence to show that after the indirect transfer of the ownership interests in EP Newington to Nautilus, EP Newington will ensure the Facility remains in compliance with the terms of the Certificate. Messrs. O'Connor and Felts testified as to the nature and extent of the capabilities and experience of Nautilus and its affiliates, including Cogentrix, Carlyle Power Partners and CPP II, in owning and operating power generating facilities like the Facility. This Order does not change or modify the terms and conditions of the Certificate. The Committee maintains the authority to monitor and enforce the terms and conditions of the Certificate. See, RSA 162-H:4, I. Finally, any future changes in ownership or attempts to transfer the Certificate are subject to the approval of the Committee.

Order

Based upon the foregoing, it is hereby:

Ordered that the Joint Petition is GRANTED and the Petitioners are authorized to indirectly transfer all of the membership interests in Essential Power Newington, LLC to Nautilus Generation, LLC; and,

It is further ordered that any change in ownership of Essential Power Newington, LLC without approval of this Committee shall render the Certificate subject to revocation. The Certificate itself shall not be transferred or assigned to any other person or entity without the approval of the Committee; and,

It is further ordered that all of the terms and conditions of the Certificate originally issued to Newington Energy, LLC in SEC Docket No. 98-01 remain in full force and effect.

By Order of the Subcommittee appointed by the Site Evaluation Committee of New Hampshire this ___ day of June, 2016, at Concord, New Hampshire.